

Carolyn J. Johnsen
Texas Bar No. 19844600
DICKINSON WRIGHT PLLC
1850 N. Central Ave. Suite 1400
Phoenix, AZ 85004
Telephone: (602) 285-5040
Facsimile: (602) 285-5100
cjohnsen@dickinsonwright.com

**PROPOSED COUNSEL FOR THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹	§	Case No. 21-30721 (SGJ)
	§	Chapter 11
Debtors.	§	(Jointly Administered)

**APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF CALIBER ADVISORS, LLC AS FINANCIAL ADVISOR FOR THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS EFFECTIVE MAY 12, 2021**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON JUNE 23, 2021 AT 1:30 P.M. (CT) AT THE UNITED STATES BANKRUPTCY COURT, 1100 COMMERCE STREET, 14TH FLOOR, DALLAS, TEXAS 75242-1496. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST FILE A WRITTEN RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-FOUR (24) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON COUNSEL LISTED ABOVE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's Taxpayer Identification Number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe's Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors' principal offices are located at: 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the above captioned Chapter 11 bankruptcy cases (the “**Cases**”), hereby submits this application to employ Caliber Advisors, LLC (“**Caliber**” or the “**Firm**”) as financial advisor to the Committee (the “**Application**”), effective as of May 12, 2021. This Application is brought pursuant to sections 1102, 1103, 328 and 504 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), Rules 2014, 2016 and 5002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). In support of the Application, the Committee submits the Declaration of David Gonzales (the “**Declaration**”) attached as **Exhibit A**. A form of Order approving the Application is attached as **Exhibit B**. In further support of the Application, the Committee respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue of this proceeding and this Application is proper in this District pursuant to 28 U.S.C. § 1408 and 1409.
3. The bases for the relief sought herein are 11 U.S.C. §§ 1102, 1103, 328 and 504.

BACKGROUND

4. On April 20, 2021 (the “**Petition Date**”), Fresh Acquisition LLC and 14 affiliates, all listed above in footnote 1 (the “**Debtors**”), filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their business and manage its property as debtors and debtors-in-possession under Bankruptcy Code §§ 1107(a) and 1108.

6. On April 30, 2021, the Office of the United States Trustee (the “**UST**”), appointed the Committee. The Committee’s members are Westwood Financial for WFC Wyoming NM, LLC; LEECO Energy and Investments, Inc.; Upper Lakes Food, Inc.; and Tyerell Mack.

RELIEF REQUESTED

7. By this Application, the Committee seeks to employ and retain Caliber, as of May 12, 2021, the date of Caliber’s retention, as its financial advisor in connection with the Cases and for the performance of financial advisory services as set forth herein. The Committee understands that the Firm will seek compensation from the Debtors’ bankruptcy estates at its regular hourly rates and reimbursement of expenses incurred on the Committee’s behalf, subject to prior Court approval after notice and hearing.

8. The Committee seeks to retain the Firm as its financial advisor because of the Firm’s extensive experience and knowledge in the field of debtors’ and creditors’ rights and business reorganizations, sales and liquidations under Chapter 11 of the Bankruptcy Code. Specifically, Caliber’s principal David Gonzales has over 40 years of experience in banking, finance and restructuring as a banker, debtor and creditor advisor. He has served as a Chief Restructuring Officer (“CRO”) and Chief Executive Officer (“CEO”) of multiple Chapter 11 debtors. He also holds a Series 79 FINRA Investment Banking license, a Series 24 supervisory license and a Series 63 General Security license. Significant bankruptcy representations have included *In re Surgical Specialty Hospital*, No. 13-20029 (Bankr. D. Az) (financial advisor to the Debtor and eventual CRO); *In re*

Pet Resorts, No. 12-13494 (Bankr. D. Az) (financial advisor to the Committee); *In re Arctic Catering*, No.18-13118 (Bankr. D. Az) (CEO); *In re Roomstores*, No.15-15898 (Bankr. D. Az) (financial advisor to the Debtor and subsequent Liquidating Trustee).

9. Subject to Court approval in accordance with 11 U.S.C. § 330(a), compensation will be payable to the Firm on an hourly rate basis, plus reimbursement of actual, necessary expenses and other charges incurred by the Firm as agreed to between the Firm and the Committee. The principals engaged to represent the Committee are David Gonzales who bills at a rate for this case at \$400.00 per hour and Ashey Loesch who bills at a rate for this case at \$200.00 per hour.

10. The hourly rate set forth above is subject to periodic adjustments to reflect economic and other conditions. The Firm may use other professionals during the course of the case as appropriate.

11. Pursuant to the engagement agreement, dated March 13, 2021 between the Committee and Caliber, a copy of which is attached to the Order as Exhibit 1, the professional services that the Firm will render to the Committee include, but are not limited to, the following:

- provide advice and assistance to the Committee relative to the Debtors' sale of assets, reorganization and or liquidation
- review Debtors' current business plan, financial statements, and all corporate documents
- assist and advise the Committee in its examination and analysis of the conduct of the Debtors' affairs

- conduct financial diligence on projections and reports submitted by the Debtors
- make inquiries and supply Committee counsel with information related to various debtor motions; review and analyze schedules and claims
- advise the Committee on sale process with emphasis on maximizing proceeds
- assist the Committee in its negotiations with the Debtors and other parties-in-interest concerning the terms of any proposed sales and/or plan of reorganization;
- advise and assist the Committee in evaluating and prosecuting any claims that the Debtors may have against third parties; assist the Committee in the determination of whether to, and if so, how to, sell the assets of the Debtors for the highest and best price; and assist the Committee in performing such other services as may be in the interest of creditors, including, but not limited to, the commencement of, and participation in, appropriate litigation respecting the estate.

12. As more fully set forth in the Declaration, (a) neither the Firm, nor any of its principals represent any interest adverse to the Debtors, their estates, creditors or Committee members, in the matters upon which the Firm is to be engaged; (b) the Firm is a “disinterested person” within the meaning of 11 U.S.C. §§ 101(14) and 101(31); and (c) the Firm has no prior connection with the Debtors, their creditors or any other party-in-interest, or their respective attorneys or accountants in the matters upon which the Firm is to be engaged that would in any way disqualify it from representing the Committee.

13. The Committee desires to employ the Firm because of the extensive financial services that will be required in this case and because the Committee believes that the Firm is well qualified to act as financial advisor on the Committee's behalf.

14. Since the Committee retained the services of the Firm beginning May 12, 2021, the Committee requests that any order entered authorizing such retention be effective as of that date.

NOTICE

15. Notice of this Application has been provided to Debtors' counsel, the United States Trustee, counsel for Arizona Bank & Trust and VitaNova Brands, LLC, and other parties in interest who have requested notice pursuant to Bankruptcy Rule 2002. In view of the nature of the relief requested, the Committee submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Committee requests entry of an Order, substantially in the form attached hereto, authorizing the Committee to employ and retain the Firm as financial advisor as of May 12, 2021, and granting such other and further relief as is just and proper.

Dated: May 24, 2021

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: /s/ Carolyn J. Johnsen

Texas Bar No. 19844600

1850 N. Central Ave. Suite 1400

Phoenix, AZ 85004

Telephone: (602) 285-5040

Facsimile: (602) 285-5100

cjohnsen@dickinsonwright.com

**Proposed Counsel for the
Official Committee of
Unsecured Creditors**

CERTIFICATE OF SERVICE

I hereby certify that Notice of this document was electronically filed and served to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District on May 24, 2021.

/s/ Carolyn J. Johnsen
Carolyn J. Johnsen

4817-5700-2731 v1 [97257-1]

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹	§	Case No. 21-30721 (SGJ)
	§	Chapter 11
Debtors.	§	(Jointly Administered)

**DECLARATION OF DAVID GONZALES IN SUPPORT OF APPLICATION FOR AN
ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF CALIBER
ADVISORS, LLC AS FINANCIAL ADVISOR FOR THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

I, David Gonzales, under penalty and perjury of law, hereby make the following declaration of my own personal knowledge as follows:

1. I am an adult person over eighteen (18) years of age residing in Maricopa County, Arizona.
2. I am the managing member of Caliber Advisors, LLC ("**Caliber**" or the "**Firm**").
3. Caliber was retained on May 12, 2021 as financial advisor for the Official Committee of Unsecured Creditors ("**Committee**") that was appointed by the United

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's Taxpayer Identification Number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe's Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors' principal offices are located at: 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

Verified Statement

States Trustee in the above-captioned Chapter 11 cases. The terms of Caliber's engagement were formalized by letter agreement dated May 13, 2021.

4. I submit this Declaration under 11 U.S.C. §§ 327 and 329 and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure in support of the *Application for an Order Authorizing the Retention and Employment of Caliber Advisors, LLC as Financial Advisor for the Official Committee of Unsecured Creditors* ("**Application**").

5. I have over 40 years of experience in banking, finance and restructuring as a banker, debtor and creditor advisor. I have served as the financial advisor, chief restructuring officer, and/or chief executive officer in multiple Chapter 11 bankruptcies. I and other employees of the Firm are well qualified to represent the Committee.

SERVICES TO BE RENDERED

6. The professional services that Caliber will render to the Committee include, but are not limited to, the following:

- provide advice and assistance to the Committee relative to the Debtors' sale of assets, reorganization and or liquidation
- review Debtors' current business plan, financial statements, and all corporate documents
- assist and advise the Committee in its examination and analysis of the conduct of the Debtors' affairs
- conduct financial diligence on projections and reports submitted by the Debtors
- make inquiries and supply Committee counsel with information related to various debtor motions; review and analyze schedules and claims

Verified Statement

- advise the Committee on sale process with emphasis on maximizing proceeds
- assist the Committee in its negotiations with the Debtors and other parties-in-interest concerning the terms of any proposed sales and/or plan of reorganization;
- advise and assist the Committee in evaluating and prosecuting any claims that the Debtors may have against third parties; assist the Committee in the determination of whether to, and if so, how to, sell the assets of the Debtors for the highest and best price; and assist the Committee in performing such other services as may be in the interest of creditors, including, but not limited to, the commencement of, and participation in, appropriate litigation respecting the estate.

7. Caliber is willing to act and to render the necessary professional services as financial advisor for the Committee.

DISINTERESTEDNESS

8. In making this Declaration, I reviewed the list of Debtors, the Committee members, Debtors' principal secured creditors, other significant creditors made known to me, the Debtors' Independent Director, and the Debtors' proclaimed Governing Persons. To the best of my knowledge, Caliber does not have any connections with the Debtors, their largest creditors, or any other party-in-interest, or any of its respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee.

9. I have served as financial advisor, CRO and/or CEO in various cases in which Committee counsel Carolyn Johnsen has been involved.

Verified Statement

10. To the extent that it is determined that any additional matters should be disclosed, I will immediately supplement this Declaration.

11. Caliber may have had some personal or professional relationships with attorneys, accountants, employees or officers, or parties-in-interest in these cases. I do not have any knowledge of any such relationship that is material. To the extent that it is determined that any additional matters should be disclosed, I will immediately supplement this Declaration.

12. Caliber is a disinterested party as that term is defined by 11 U.S.C. § 101(14). Caliber is not a creditor, equity security holder or an insider of any of the Debtors. Caliber will act in the best interest of the Committee and will represent no other interest than that of the Committee throughout this Chapter 11 proceeding.

COMPENSATION

13. The compensation agreed to be paid to Caliber is for financial advisory services rendered or to be rendered in connection with this bankruptcy case. The amounts billed by Caliber will be for its standard hourly rates per hour and other charges, such as for expense reimbursements, photocopy services and the like. I will be the principal advisor on the case at a rate of \$400.00 per hour assisted by Ashley Loesch at a rate of \$200.00 per hour.

14. The Firm has not varied from its standard billing arrangements for this engagement. The rates charged for this engagement are consistent with rates charged for other Chapter 11 clients regardless of the location of the case. The Firm is subject to the Final Order approving the Debtor's post-petition financing.

Verified Statement

15. Any requests for payment from Debtors' estates will be subject to approval of the Court, on notice to the U.S. Trustee, creditors, and parties-in-interest. Caliber has agreed to undertake this representation based on the understanding that its fees will be an administrative expense against Debtors' estate.

16. Caliber has not shared nor agreed to share such compensation or reimbursement with anyone.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED on 24th day of May, 2021

/s/ David Gonzales
David Gonzales

Exhibit B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹	§	Case No. 21-30721 (SGJ)
	§	Chapter 11
Debtors.	§	(Jointly Administered)

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF CALIBER
ADVISORS, LLC AS FINANCIAL ADVISOR FOR THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

This matter comes before the Court on the *Application for an Order Authorizing the Retention and Employment of Caliber Advisors, LLC as Financial Advisor for the Official Committee of Unsecured Creditors* (the “**Application**”) [Doc ____] filed on behalf of the Official Committee of Unsecured Creditors (the “**Committee**”). Based on the Application and the *Declaration of David Gonzales* in Support of Application for an *Order Authorizing the Retention and Employment of Caliber Advisors as Financial Advisor for the Official Committee of Unsecured Creditors*, this Court finds that: (i) it has jurisdiction over matters raised in the Application under 28 U.S.C. §§ 157 and 1334; (ii) venue of this matter is proper under 28 U.S.C. §§ 1408 and 1409; (iii) this matter is a core proceeding under 28 U.S.C. §157(b)(2); (iv) the relief requested in the Application is in the best interest of the Debtors, their estates, their creditors, and other parties in interest; (v) Caliber does not

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's Taxpayer Identification Number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe's Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors' principal offices are located at: 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

hold or represent an interest adverse to the Debtors' estates; (vi) Caliber is a "disinterested person" as defined in Section 101(14) of the Bankruptcy Code and required by Section 327(a) of the Bankruptcy Code; and (vii) adequate and proper notice of the Application has been given, and no other or further notice of the Application is required. Based on the foregoing and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Application is GRANTED.
2. The Committee is authorized to retain and employ Caliber Advisors, LLC as its financial advisor as of May 12, 2021, to perform the services as set forth in the Application.
3. Caliber Advisors, LLC will be compensated in accordance with the procedures set forth in the Application, 11 U.S.C. §§ 330 and 331, such Bankruptcy Rules and Local Rules as may be applicable from time to time, and such procedures as may be fixed by order of this Court.

END OF ORDER

PREPARED BY:

Carolyn J. Johnsen
Texas Bar No. 19844600
DICKINSON WRIGHT PLLC
1850 N. Central Ave. Suite 1400
Phoenix, AZ 85004
Telephone: (602) 285-5040
Facsimile: (602) 285-5100
cjohnsen@dickinsonwright.com

**PROPOSED COUNSEL FOR THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS**

Exhibit 1



Caliber Advisors LLC
Finance Advisory Services

May 13, 2021

Mr. Tim Chung,
Chair Fresh Acquisitions LLC et.al. Chapter 11 Committee

Dear Mr. Chung:

This letter agreement (Agreement) confirms our understanding that Fresh Acquisitions, LLC et.al. Chapter 11 Creditors Committee (Client) has engaged Caliber Advisors, LLC (CALIBER) as its finance advisor in the Fresh Acquisitions LLC et.al. Chapter 11 Chapter 11 case (Debtor).

This Agreement sets forth the terms and conditions pursuant to which CALIBER will provide certain finance advisory services as described herein. The engagement described herein shall be in accordance with applicable laws and pursuant to the following procedures, terms, and conditions.

1. **Term.** The term of this Agreement will be for a period of one (1) month commencing on the execution of this Agreement. Upon expiration of the Initial Term and any Renewal Term (as defined herein), this Agreement will automatically renew for a renewal term of the same length as the Initial Term (each a Renewal Term) unless CALIBER or the Client provides the other with written notice of nonrenewal at least ten (10) days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable.
2. **CALIBER Services.** Under the terms of this Agreement, CALIBER will provide but limited to, the following services:
 - a) Review current business plan, financial statements, all relevant corporate documents for the Debtor.
 - b) Conduct financial diligence on Debtor projections and reports submitted.
 - c) Make inquiries and supply Client counsel with information related to various debtor motions.
 - d) Advise the Client on the Debtor sale process, with emphasis on maximizing proceeds.
 - e) Review unsecured claims for appropriateness.
 - f) Review priority claims for appropriateness.
 - g) Review sales process materials for appropriateness.
3. **CALIBER Compensation.** The Client agrees to pay CALIBER for its services according to the following schedule,
 - a) **Hourly Fee:**
 - \$400 per hour for David Gonzales


Initial

- \$200 per hour for Ashley Loesch
 - Monthly billings are limited \$15,000 per month.
4. **Expense Reimbursement.** The Client will reimburse CALIBER for all reasonable and pre-approved, court permitted out-of-pocket expenses (including, without limitation, its travel, accommodation, communications, due diligence support, and video preparation expenses) directly related to this engagement.
 5. **Monthly Bills.** Caliber and Committee understand that all of Caliber's fees and expenses will be paid by the Debtor unless otherwise agreed. Caliber will prepare monthly billings for submission to the Bankruptcy Court for approval and Committee will ensure through its counsel that such submissions are filed timely and submitted for payment.
 6. **Confidentiality.** CALIBER agrees to be bound by the NDA signed by the debtor.
 7. **Termination.** This Agreement and CALIBER's engagement hereunder may be terminated by either the Company or CALIBER at any time with or without cause, upon written notice thereof to the other party; provided, however, that CALIBER shall be entitled to the fees provided for in this Agreement.
 8. **Governing Law, Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without regard to principles of conflicts of law. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.
 9. **Entire Agreement; Amendment and Waiver.** This Agreement constitutes the entire agreement and understanding between CALIBER and the Client.
 10. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.
 11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original but all of which shall together constitute one instrument. This Agreement also may be executed by signatures on facsimiles hereof or signatures transmitted electronically.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to me the enclosed letter.

SINCERELY,

By: 
David Gonzales

Fresh Acquisitions, LLC et.al. Chapter 11 Creditors Committee


Agreed and executed by Mr. Tim Chung, Chair